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<PREAMB>

<AGENCY TYPE='S'>DEPARTMENT OF COMMERCE

<SUBAGY>Bureau of Industry and Security

<CFR>15 CFR Parts 742 and 774

<DEPDOC>[Docket No. 120202094-2065-01]

<RIN>RIN 0694-AF54

<SUBJECT>Revisions to the Export Administration Regulations (EAR): Control of Military Training Equipment and Related Items the President Determines No Longer Warrant Control Under the United States Munitions List (USML)

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Proposed rule.

SUMMARY: This proposed rule describes how articles the President determines no longer warrant control under Category IX (Military Training Equipment and Training) of the United States Munitions List (USML) would be controlled under the Commerce Control List (CCL) in new Export Control Classification Numbers (ECCNs) 0A614, 0B614, 0D614, and 0E614.

This rule is one in a planned series of proposed rules describing how various types of articles the President determines, as part of the Administration's Export Control Reform Initiative, no longer warrant USML control, would be controlled on the CCL and by the EAR. This proposed rule is being published in conjunction with a proposed rule from the Department of State, Directorate of Defense Trade Controls, which would amend the list of articles enumerated in USML Category IX. The revisions in this rule are part of Commerce's retrospective plan under EO 13563 completed in August 2011. Commerce's full plan can be accessed at:

<http://open.commerce.gov/news/2011/08/23/commerce-plan-retrospective-analysis-existing-rules>.

DATES: Comments must be received by July 30, 2012.

ADDRESSES: You may submit comments by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. The identification number for this rulemaking is BIS-2012-0023.
- By e-mail directly to publiccomments@bis.doc.gov. Include RIN 0694-AF54 in the subject line.
- By mail or delivery to Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 2099B, 14th Street and Pennsylvania Avenue, NW, Washington, DC 20230. Refer to RIN 0694-AF54.

FOR FURTHER INFORMATION CONTACT: Daniel Squire, Office of National Security and Technology Transfer Controls, Sensors and Aviation Division, tel. 202 482 3710, email daniel.squire@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

<HD1>Background

On July 15, 2011, as part of the Administration’s ongoing Export Control Reform Initiative, BIS published a proposed rule (76 FR 41958) (herein “the July 15 proposed rule”) that set forth a framework for how articles the President determines, in accordance with section 38(f) of the

Arms Export Control Act (AECA) (22 U.S.C. 2778(f)), would no longer warrant control on the United States Munitions List (USML) and would be controlled on the Commerce Control List (CCL) in Supplement No. 1 to Part 774 of the Export Administration Regulations (EAR). On November 7, 2011, BIS published a rule (76 FR 68675) proposing several changes to the framework initially proposed in the July 15 rule.

Following the structure of the July 15 and November 7 proposed rules, this proposed rule describes BIS's proposal for controlling under the EAR and its CCL military training equipment and related articles now controlled by the ITAR's USML under Category IX but that would no longer be so controlled if the State Department's proposed revision to the Category were to become final. The changes described in this proposed rule and the State Department's proposed companion rule to Category IX of the USML are based on a review of Category IX by the Defense Department, which worked with the Departments of State and Commerce in preparing the proposed amendments. The review was focused on identifying the types of articles that are now enumerated in USML Category IX that are either (i) inherently military and otherwise warrant control on the USML or (ii) common to non-military training equipment applications, possess parameters or characteristics that provide a critical military or intelligence advantage to the United States, and almost exclusively available from the United States. If an article satisfied one or both of those criteria, the article remained on the USML. If an article did not satisfy either standard but was nonetheless a type of article that is, as a result of differences in form and fit, "specially designed" for military applications, it was identified in the new ECCNs proposed in this notice. The licensing requirements and other EAR-specific controls for such items described in this notice would enhance national security by permitting the U.S. Government to

focus its resources on controlling, monitoring, investigating, analyzing, and, if need be, prohibiting exports and reexports of more significant items to destinations, end uses, and end users of greater concern than our NATO allies and other multi-regime partners.

Pursuant to section 38(f) of the AECA, the President shall review the USML “to determine what items, if any, no longer warrant export controls under” the AECA. The President must report the results of the review to Congress and wait 30 days before removing any such items from the USML. The report must “describe the nature of any controls to be imposed on that item under any other provision of law.” 22 U.S.C. 2778(f)(1).

In the July 15 proposed rule, BIS proposed creating a series of new ECCNs to control items that would be removed from the USML, or that are items from the Munitions List of the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual Use Goods and Technologies List (Wassenaar Arrangement Munitions List or WAML) that are already controlled elsewhere on the CCL. The proposed rule referred to this series as the “600 series” because the third character in each of the new ECCNs would be a “6.” The first two characters of the 600 series ECCNs serve the same function as any other ECCN as described in § 738.2 of the EAR. The first character is a digit in the range 0 through 9 that identifies the Category on the CCL in which the ECCN is located. The second character is a letter in the range A through E that identifies the product group within a CCL Category. In the 600 series, the third character is the number 6. With few exceptions, the final two characters identify the WAML category that covers items that are the same or similar to items in a particular 600 series ECCN.

This proposed rule would create four such ECCNs: 0A614, 0B614, 0D614, and 0E614. ECCN 0A614 would control military training equipment and specific “parts,” “components,” and “accessories and attachments” therefor. ECCN 0B614 would control test, inspection, and production “equipment,” including related “parts,” “components,” and “accessories and attachments,” for the “production” or “development” of commodities controlled by ECCN 0A614 or articles controlled by USML Category IX. ECCN 0D614 would control “software” for the “development,” “production,” operation or maintenance of items controlled by ECCNs 0A614 or 0B614. ECCN 0E614 would control “technology” for the “development,” “production,” operation, installation, maintenance, repair or overhaul of commodities controlled by ECCNs 0A614 or 0B614 or “software” controlled by ECCN 0D614.

The revisions in this rule are part of Commerce’s retrospective plan under EO 13563 completed in August 2011. Commerce’s full plan can be accessed at:

<http://open.commerce.gov/news/2011/08/23/commerce-plan-retrospective-analysis-existing-rules>.

BIS will publish additional *Federal Register* notices containing proposed amendments to the CCL that will describe proposed controls for additional categories of articles the President determines no longer warrant control under the USML. The State Department will publish concurrently proposed amendments to the USML that correspond to the BIS notices. BIS will also publish proposed rules to further align the CCL with the WAML and the Missile Technology Control Regime Equipment, Software and Technology Annex.

<HD1>**Detailed Description of Changes Proposed by This Rule**

<HD2>New ECCN 0A614: Military Training “Equipment”

Proposed ECCN 0A614 would impose national security (NS Column 1), regional stability (RS Column 1), and anti-terrorism controls on military training “equipment” not controlled by the USML and on most “parts,” “components,” and “accessories and attachments” “specially designed” for such military training “equipment.” ECCN 0A614 also would apply the same controls to “parts,” “components,” and “accessories and attachments” for military training “equipment” controlled by Category IX of the USML unless such “parts,” “components,” or “accessories and attachments” are specifically controlled by the USML or another ECCN on the Commerce Control List. Notes to proposed ECCN 0A614 would identify how specific commodities would be classified under ECCN 0A614, including simulators for non-combat military aircraft, certain radar training units, and training “equipment” for ground military operations. ECCN 0A614.y would impose only anti-terrorism controls on specific “parts,” “components,” and “accessories and attachments” that are “specially designed” for a commodity controlled by ECCN 0A614 and not specified elsewhere in the CCL.

<HD2>New ECCN 0B614: Test, Inspection, and Production “Equipment” for Military Training “Equipment” and “Specially Designed” “Parts,” “Components,” and “Accessories and Attachments” Therefor

Proposed ECCN 0B614 would impose national security (NS Column 1), regional stability (RS Column 1), and anti-terrorism controls on test, inspection and production equipment, and on “parts,” “components,” and “accessories and attachments” therefor, that are “specially designed” for the “production” of commodities controlled by ECCN 0A614 or USML Category IX. ECCN 0B614.y would impose only anti-terrorism controls on specific “parts,” “components,” and “accessories and attachments” that are “specially designed” for a commodity controlled by ECCN 0B614 and not specified elsewhere in the CCL.

<HD2>New ECCN 0D614: “Software” Related to Military Training “Equipment”

Proposed ECCN 0D614 would impose national security, (NS Column 1), regional stability (RS Column 1), and anti-terrorism (AT Column 1) controls on “software” “specially designed” for the “development,” “production,” operation or maintenance of commodities controlled by ECCNs 0A614 or 0B614 (except the .y paragraphs of these ECCNs). ECCN 0D614.y would impose only anti-terrorism controls on specific “software” that is “specially designed” for the “production,” “development,” operation or maintenance of commodities controlled by ECCNs 0A614.y or 0B614.y.

<HD2>New ECCN 0E614: “Technology” (Related to ECCNs 0A014, 0B014, and 0D014)

Proposed ECCN 0E614 would impose national security (NS Column 1), regional stability (RS Column 1), and anti-terrorism (AT Column 1) controls on “technology” “required” for the

“development,” “production,” operation, installation, maintenance, repair, or overhaul of commodities controlled by 0A614 or 0B614, or software controlled by 0D614 (except the .y paragraphs of these ECCNs). ECCN 0E614.y would impose only anti-terrorism controls on specific “technology” that is “required” for the “production,” “development,” operation, installation, maintenance, repair or overhaul of commodities controlled by ECCNs 0A614.y or 0B614.y or software controlled by ECCN 0D614.y.

<HD2>Inclusion of “.y.99” Paragraphs in 600 Series ECCNs

Proposed new ECCNs 0A614, 0B614, 0D614 and 0E614 also would contain a paragraph “.y.99” that would control any item that meets all of the following criteria: (i) the item is not listed on the CCL; (ii) the item was previously determined to be subject to the EAR in an applicable commodity jurisdiction determination issued by the U.S. Department of State; and (iii) the item would otherwise be controlled under one of these 0x614 ECCNs because, for example, the item was “specially designed” for a military use.

<HD2>Revisions to § 742.6 of the EAR

To implement the regional stability controls that apply to the four new “600 series” ECCNs noted above, this proposed rule would revise § 742.6(a)(1) of the EAR to apply the RS Column 1 licensing policy to items classified under ECCNs 0A614, 0B614, 0D614 and 0E614 (except the .y paragraphs).

<HD1>Proposed New ECCNs and License Exception STA

The July 15 proposed rule, as modified by the November 7 proposed rule, would preclude use of License Exception STA for end-items in 600 series ECCNs unless eligibility for such use was applied for and approved by BIS. This proposed rule would exempt end items classified under ECCN 0A614 (military training “equipment”) and classified under ECCN 0B614 (test, inspection and production “equipment” for military training “equipment”) from that requirement. BIS notes this proposed policy by including in the STA paragraphs of these two ECCNs a statement that reads: “Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1)) may be used for items in 0A614 without the need for a determination described in § 740.20(g).” This provision would prevail over the elements of the July 15 proposed rule, as modified by the November 7 proposed rule, that indicated that “600 series” “end items” may not be exported, reexported or transferred pursuant to License Exception STA unless those end items have been identified by BIS in writing or published as an eligible item for License Exception STA in response to a License Exception STA eligibility request in accordance with § 740.20(g) of the EAR.

<HD1>Request for Comments

All comments must be in writing and submitted via one or more of the methods listed under the “ADDRESSES” caption to this notice. All comments (including any personal identifiable information) will be available for public inspection and copying. Those wishing to comment

anonymously may do so by submitting their comment via regulations.gov and leaving the fields for identifying information blank.

<HD2>*Relationship to the July 15 Proposed Rule and the November 7 Proposed Rule*

As referenced above, the purpose of the July 15 proposed rule was to set up the framework to support the transfer of items from the USML to the CCL. To facilitate that goal, the July 15 proposed rule contained definitions and concepts that were meant to be applied across categories. However, as BIS undertakes rulemakings to move specific categories of items from the USML to the CCL, there may be unforeseen issues or complications that may require BIS to reexamine those definitions and concepts. The comment period for the July 15 proposed rule closed on September 13, 2011. In the November 7 proposed rule, BIS proposed several changes to those definitions and concepts. The comment period for the November 7 proposed rule closed on December 22, 2011.

To the extent that this rule's proposals affect any provision in either of those proposed rules or any provision in either of those proposed rules affect this proposed rule, BIS will consider comments on those provisions so long as they are within the context of the changes proposed in this rule.

BIS believes that the following aspects of the July 15 proposed rule and the November 7 proposed rule are among those that could affect this proposed rule:

- *De minimis* provisions in § 734.4;
- Restrictions on use of license exceptions in §§ 740.2, 740.10, 740.11, and 740.20;
- Change to national security licensing policy in § 742.4;
- Licensing policy in § 742.4(b)(1)(ii);
- Addition of 600 series items to Supplement No. 2 to Part 744 – List of Items Subject to the Military End-Use Requirement of § 744.21;
- Addition of U.S. arms embargo policy regarding 600 series items set forth in § 742.4(b)(1)(ii) (national security) of the July 15 proposed rule to § 742.6(b)(1) (regional stability) of the November 7 proposed rule; and
- Definitions of terms in § 772.1.

<HD1>**Effects of This Proposed Rule**

<HD2>*De minimis*

The July 15 proposed rule would impose certain unique *de minimis* requirements on items controlled under the new 600 series ECCNs. Section 734.3 of the EAR provides, *inter alia*, that under certain conditions, items made outside the United States that incorporate items subject to the EAR are not subject to the EAR if they do not exceed a *de minimis* percentage of controlled U.S.-origin content. Depending on the destination, the *de minimis* percentage can be either 10 percent or 25 percent. The military training “equipment” and the test, inspection and production “equipment” for military training “equipment” that would be subject to the EAR as a result of this proposed rule would become eligible for *de minimis* treatment.

<HD2>*Use of License Exceptions*

Military training “equipment” and test, inspection, and production “equipment” therefor currently on the USML that would be classified under ECCNs 0A614 and 0B614 would become eligible for several license exceptions, including STA, which would be available for exports to certain government agencies of NATO and other multi-regime close allies. The exchange of information and statements required under STA is substantially less burdensome than are the license application requirements currently required under the ITAR, as discussed in more detail in the “Regulatory Requirements” section of this proposed rule. None of the military training “equipment” or test, inspection and production “equipment” therefor that would be controlled by ECCNs 0A614 or 0B614 would be subject to the provision in the July 15 proposed rule that proposes to preclude the use of License Exception STA for “600 series” end items unless approval for such use is sought from and granted by BIS. The items covered by this rule also would be eligible for the following license exceptions: LVS (limited value shipments), up to \$1500; TMP (temporary exports); and RPL (servicing and parts replacement).

<HD2>*Alignment with the Wassenaar Arrangement Munitions List*

The Administration has stated since the beginning of the Export Control Reform Initiative that the reforms will be consistent with U.S. obligations to the multilateral export control regimes. Accordingly, the Administration will, in this and subsequent proposed rules, exercise its national discretion to implement, clarify, and, to the extent feasible, align its controls with those of the

regimes. This proposed rule would align controls on the items that it adds to the CCL by placing them in new 600 series ECCNs ending in “14” to parallel Category ML14 on the Wassenaar Arrangement Munitions List (“Specialised equipment for military training' or for simulating military scenarios, simulators specially designed for training in the use of any firearm or weapon specified by ML.1 or ML.2, and specially designed components and accessories therefor”). Items in proposed ECCN 0A614 are covered by WAML Category ML 14.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 12, 2011, 76 FR 50661 (August 16, 2011), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222.

<HD1>Rulemaking requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting

flexibility. This rule has been designated a “significant regulatory action,” although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB).

2. Notwithstanding any other provision of law, no person is required to respond to, nor is subject to a penalty for failure to comply with, a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid OMB control number. This proposed rule would affect two approved collections: Simplified Network Application Processing System (control number 0694-0088), which includes, among other things, license applications, and License Exceptions and Exclusions (0694-0137).

As stated in the proposed rule published at 76 FR 41958 (July 15, 2011), BIS believes that the combined effect of all rules to be published adding items to the EAR that would be removed from the ITAR as part of the administration’s Export Control Reform Initiative would increase the number of license applications to be submitted by approximately 16,000 annually, resulting in an increase in burden hours of 5,067 (16,000 transactions at 17 minutes each) under control number 0694-0088.

Military training “equipment,” related test, inspection, and production “equipment,” “parts,” “components,” “accessories and attachments,” “software” and “technology” formerly on the USML would become eligible for License Exception STA under this rule. As stated in the July 15 proposed rule, BIS believes that the increased use of License Exception STA resulting from

combined effect of all rules to be published adding items to the EAR that would be removed from the ITAR as part of the administration's Export Control Reform Initiative would increase the burden associated with control number 0694-0137 by about 23,858 hours (20,450 transactions @ 1 hour and 10 minutes each).

BIS expects that this increase in burden would be more than offset by a reduction in burden hours associated with approved collections related to the ITAR. The largest impact of the proposed rule would likely apply to exporters of replacement parts for military training "equipment" that has been approved under the ITAR for export to allies and regime partners. Because, with few exceptions, the ITAR allows exemptions from license requirements only for exports to Canada, most exports of such parts, even when destined to NATO and other close allies, require specific State Department authorization. Under the EAR, as proposed in this notice, such parts as well as non-combat military trainers, certain radar trainers and training "equipment" for ground military operations along with related test, inspection, and production "equipment" would become eligible for export to NATO and other multi-regime allies under License Exception STA. Use of License Exception STA imposes a paperwork and compliance burden because, for example, exporters must furnish information about the item being exported to the consignee and obtain from the consignee an acknowledgement and commitment to comply with the EAR. However, the Administration understands that complying with the burdens of STA is likely less burdensome than applying for licenses. For example, under License Exception STA, a single consignee statement can apply to an unlimited number of products, need not have an expiration date, and need not be submitted to the government in advance for approval. Suppliers with regular customers can tailor a single statement and assurance to match their

business relationship rather than applying repeatedly for licenses with every purchase order to supply reliable customers in countries that are close allies or members of export control regimes or both.

Even in situations in which a license would be required under the EAR, the burden is likely to be reduced compared to the license requirement of the ITAR. In particular, license applications for exports of technology controlled by ECCN 0E614 are likely to be less complex and burdensome than the authorizations required to export ITAR-controlled technology, *i.e.*, Manufacturing License Agreements and Technical Assistance Agreements.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare an initial regulatory flexibility analysis (IRFA) of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute. However, under section 605(b) of the RFA, however, if the head of an agency certifies that a rule will not have a significant impact on a substantial number of small entities, the RFA does not require the agency to prepare a regulatory flexibility analysis. Pursuant to section 605(b), the Chief Counsel for Regulation, Department of Commerce, submitted a memorandum to the Chief Counsel for Advocacy, Small Business Administration, certifying that

this proposed rule, if promulgated, will not have a significant impact on a substantial number of small entities.

<HD2>*Number of Small Entities*

The Bureau of Industry and Security (BIS) does not collect data on the size of entities that apply for and are issued export licenses. Although BIS is unable to estimate the exact number of small entities that would be affected by this rule, it acknowledges that this rule would affect some unknown number.

<HD2>*Economic Impact*

This proposed rule is part of the Administration's Export Control Reform Initiative. Under that initiative, the United States Munitions List (22 CFR part 121) (USML) would be revised to be a "positive" list, *i.e.*, a list that does not use generic, catch-all controls on any part, component, accessory, attachment, or end item that was in any way specifically modified for a defense article, regardless of the article's military or intelligence significance or non-military applications. At the same time, articles that are determined to no longer warrant control on the USML would become controlled on the Commerce Control List (CCL). Such items, along with certain military items that currently are on the CCL, will be identified in specific Export Control Classification Numbers (ECCNs) known as the "600 series" ECCNs. In addition, some items currently on the Commerce Control List would move from existing ECCNs to the new 600 series ECCNs. In practice, the greatest impact of this rule on small entities would likely be reduced

administrative costs and reduced delay for exports of items that are now on the USML but would become subject to the EAR. This rule addresses Category IX articles, which are: military training “equipment,” “parts,” “components,” and “accessories and attachments” therefor; test, inspection, and production “equipment” for military training “equipment” and “parts,” “components” and “accessories and attachments” therefor; and related “software” and “technology.” Training “equipment” related to certain inherently military functions would remain on the USML. However, parts, components, and “accessories and attachments” for that “equipment” would be included on the CCL unless expressly controlled on the USML. Such parts and components are more likely to be produced by small businesses than are complete items of training equipment, and would in many cases become subject to the EAR. Moreover, officials of the Department of State have informed BIS that license applications for such parts and components are a high percentage of the license applications for USML articles reviewed by that department.

Changing the jurisdictional status of Category IX items would reduce the burden on small entities (and other entities as well) through:

- elimination of some license requirements,
- greater availability of license exceptions,
- simpler license application procedures, and
- reduced (or eliminated) registration fees.

In addition, parts and components controlled under the ITAR remain under ITAR control when incorporated into foreign-made items, regardless of the significance or insignificance of the item,

discouraging foreign buyers from incorporating such U.S. content. The availability of *de minimis* treatment under the EAR may reduce the incentive for foreign manufacturers to avoid purchasing U.S.-origin parts and components.

Many exports and reexports of the Category IX articles that would be placed on the CCL, as proposed in this rule, particularly parts and components, would become eligible for license exceptions that apply to shipments to U.S. Government agencies, shipments valued at less than \$1,500, parts and components being exported for use as replacement parts, temporary exports, and License Exception Strategic Trade Authorization (STA), reducing the number of licenses that exporters of these items would need. License exceptions under the EAR would allow suppliers to send routine replacement parts and low level parts to NATO and other close allies and export control regime partners for use by those governments and for use by contractors building equipment for those governments or for the U.S. Government without having to obtain export licenses. Under License Exception STA, the exporter would need to furnish information about the item being exported to the consignee and obtain a statement from the consignee that, among other things, would commit the consignee to comply with the EAR and other applicable U.S. laws. Because such statements and obligations can apply to an unlimited number of transactions and have no expiration date, they would impose a net reduction in burden on transactions that the government routinely approves through the license application process that the License Exception STA statements would replace.

Even for exports and reexports in which a license would be required, the process would be simpler and less costly under the EAR. When a USML Category IX article is moved to the CCL, the number of destinations for which a license is required would remain unchanged. However,

the burden on the license applicant would decrease because the licensing procedure for CCL items is simpler and more flexible than the license procedure for USML articles.

Under the USML licensing procedure, an applicant must include a purchase order or contract with its application. There is no such requirement under the CCL licensing procedure. This difference gives the CCL applicant at least two advantages. First, the applicant has a way of determining whether the U.S. government will authorize the transaction before it enters into potentially lengthy, complex and expensive sales presentations or contract negotiations. Under the USML procedure, the applicant will need to caveat all sales presentations with a reference to the need for government approval and is more likely to have to engage in substantial effort and expense only to find that the government will reject the application. Second, a CCL license applicant need not limit its application to the quantity or value of one purchase order or contract. It may apply for a license to cover all of its expected exports or reexports to a particular consignee over the life of a license (normally two years, but may be longer if circumstances warrant a longer period), reducing the total number of licenses for which the applicant must apply.

In addition, many applicants exporting or reexporting items that this rule would transfer from the USML to the CCL would realize cost savings through the elimination of some or all registration fees currently assessed under the ITAR's licensing procedure. Currently, ITAR applicants must pay to use the ITAR licensing procedure even if they never actually are authorized to export. Registration fees for manufacturers and exporters of articles on the USML start at \$2,500 per year, increase to \$2,750 for organizations applying for one to ten licenses per year and further increases to \$2,750 plus \$250 per license application (subject to a maximum of three percent of total application value) for those who need to apply for more than ten licenses per year. There

are no registration or application processing fees for applications to export items listed on the CCL. Once the Category IX items that are the subject to this rulemaking are removed from the USML and added to the CCL, entities currently applying for licenses from the Department of State would find their registration fees reduced if the number of ITAR licenses those entities need declines. If an entity's entire product line is moved to the CCL, then its ITAR registration and registration fee requirement would be eliminated.

De minimis treatment under the EAR would become available for all items that this rule proposes to transfer from the USML to the CCL. Items subject to the ITAR remain subject to the ITAR when they are incorporated abroad into a foreign-made product regardless of the percentage of U.S. content in that foreign made product. Foreign-made products that incorporate items that this rule would move to the CCL would be subject to the EAR only if their total controlled U.S.-origin content exceeded 10 percent. Because including small amounts of U.S.-origin content would not subject foreign-made products to the EAR, foreign manufacturers would have less incentive to avoid such U.S.-origin parts and components, a development that potentially would mean greater sales for U.S. suppliers, including small entities.

BIS is still considering comments made in response to the July 15 rule pertaining to these proposed new *de minimis* levels and, as noted above, will consider *de minimis*-related comments to this proposed rule provided they are in the context of this proposed rule. However, BIS believes that increased burden imposed by those actions will be offset substantially by the reduction in burden attributable to the moving of items from the USML to CCL and the compliance benefits associated with the consolidation of all WAML items subject to the EAR in one series of ECCNs.

<HD2>*Conclusion*

BIS is unable to determine the precise number of small entities that would be affected by this rule. Based on the facts and conclusions set forth above, BIS believes that any burdens imposed by this rule would be offset by a reduction in the number of items that would require a license, increased opportunities for use of license exceptions for exports to certain countries, simpler export license applications, reduced or eliminated registration fees and application of a *de minimis* threshold for foreign-made items incorporating U.S.-origin parts and components, which would reduce the incentive for foreign buyers to design out or avoid U.S.-origin content. For these reasons, the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule, if adopted in final form, would not have a significant economic impact on a substantial number of small entities. Accordingly, no IRFA is required, and none has been prepared.

<LSTSUB><HED>**List of Subjects**

<CFR>*15 CFR Part 742*

Exports, Terrorism.

<CFR>*15 CFR Part 774*

Exports, Reporting and recordkeeping requirements.</LSTSUB>

For the reasons stated in the preamble, parts 742 and 774 of the Export Administration Regulations (15 CFR parts 730-774) are proposed to be amended as follows:

PART 742 – [AMENDED]

1. The authority citation for 15 CFR part 742 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; Sec. 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011); Notice of November 9, 2011, 76 FR 70319 (November 10, 2011).

2. Section 742.6 is amended by revising paragraph (a)(1) to read as follows:

§ 742.6 Regional stability.

(a) *License requirements.* The following controls are maintained in support of U.S. foreign policy to maintain regional stability:

(1) *RS Column 1 License Requirements in General.* As indicated in the CCL and in RS column 1 of the Commerce Country Chart (see Supplement No. 1 to part 738 of the EAR), a license is required to all destinations, except Canada, for items described on the CCL under ECCNs 0A606 (except 0A606.b and .y); 0A614 (except 0A614.y); 0A617 (except 0A617.y); 0B606 (except 0B606.y); 0B614 (except 0B614.y); 0B617 (except 0B617.y); 0C606 (except 0C606.y); 0C617; 0D606 (except 0D606.y); 0D614 (except 0D614.y); 0D617 (except 0D617.y); 0E606 (except 0E606.y); 0E614 (except 0E614.y); 0E617 (except 0E617.y); 1A607 (except 1A607.y); 1B607; (except 1B607.y); 1B608 (except 1B608.y); 1C607; 1C608; 1D607 (except 1D607.y); 1D608(except 1D608.y); 1E607 (except 1E607.y); 1E608 (except 1E608.y); 3A982; 3D982; 3E982; 6A002.a.1, a.2, a.3, .c, or .e; 6A003.b.3, and b.4.a; 6A008.j.1; 6A998.b; 6D001 (only “software” for the “development” or “production” of items in 6A002.a.1, a.2, a.3, .c; 6A003.b.3 and .b.4; or 6A008.j.1); 6D002 (only “software” for the “use” of items in 6A002.a.1, a.2, a.3, .c; 6A003.b.3 and .b.4; or 6A008.j.1); 6D003.c, 6D991 (only “software” for the “development,” “production,” or “use” of equipment controlled by 6A002.e or 6A998.b); 6E001 (only technology” for “development” of items in 6A002.a.1, a.2, a.3 (except 6A002.a.3.d.2.a and 6A002.a.3.e for lead selenide focal plane arrays), and .c or .e, 6A003.b.3 and b.4, or 6A008.j.1); 6E002 (only “technology” for “production” of items in 6A002.a.1, a.2, a.3, .c, or .e, 6A003.b.3 or b.4, or 6A008.j.1); 6E991 (only “technology” for the “development,” “production,” or “use” of equipment controlled by 6A998.b); 6D994; 7A994 (only QRS11–00100–100/101 and

QRS11–0050–443/569 Micromachined Angular Rate Sensors); 7D001 (only “software” for “development” or “production” of items in 7A001, 7A002, or 7A003); 7E001 (only “technology” for the “development” of inertial navigation systems, inertial equipment, and specially designed components therefor for civil aircraft); 7E002 (only “technology” for the “production” of inertial navigation systems, inertial equipment, and specially designed components therefor for civil aircraft); 7E101 (only “technology” for the “use” of inertial navigation systems, inertial equipment, and specially designed components for civil aircraft); 8A609 (except 8A609.y); 8A620 (except 8A620.y); 8B609 (except 8B609.y); 8B620 (except 8B620.y); 8C609 (except 8C609.y); 8D609 (except software for the “development,” “production,” operation, or maintenance of commodities controlled by 8A609.y, 8B609.y, or 8C609.y); 8D620 (except software for the “development,” “production,” operation, or maintenance of commodities controlled by 8A620.y or 8B620.y); 8E609 (except “technology” for the “development,” “production,” operation, installation, maintenance, repair, or overhaul of commodities controlled by 8A609.y, 8B609.y, or 8C609.y); 8E620 (except “technology” for the “development,” “production,” operation, installation, maintenance, repair, overhaul, or refurbishment of commodities controlled by 8A620.y or 8B620.y); 9A610 (except 9A610.y); 9A619 (except 9A619.y); 9B610 (except 9B610.y); 9B619 (except 9B619.y); 9C610 (except 9C610.y); 9C619 (except 9C619.y); 9D610 (except software for the “development,” “production,” operation, installation, maintenance, repair, or overhaul of commodities controlled by 9A610.y, 9B610.y, or 9C610.y); 9D619 (except software for the “development,” “production,” operation, or maintenance of commodities controlled by 9A619.y, 9B619.y, or 9C619.y); 9E610 (except “technology” for the “development,” “production,” operation, installation, maintenance, repair, or overhaul of commodities controlled by ECCN 9A610.y,

9B610.y, or 9C610.y); and 9E619 (except “technology” for the “development,” “production” operation, installation, maintenance, repair, or overhaul of commodities controlled by ECCN 9A619.y, 9B619.y, or 9C619.y).

* * * * *

PART 774 - [AMENDED]

3. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011).

4. In Supplement No. 1 to Part 774, the Commerce Control List, add, between the entries for Export Control Classification Numbers 0A018 and 0A918, a new entry for Export Control Classification Number 0A614 to read as follows:

Supplement No. 1 to Part 774 – The Commerce Control List

* * * * *

0A614 Military Training “Equipment,” as follows (see List of items controlled):

License Requirements

Reason for Control: NS, RS, AT

Control(s)	Country chart
NS applies to entire entry except 0A614.y	NS Column 1
RS applies to entire entry except 0A614.y	RS Column 1
AT applies to entire entry	AT Column 1

License Exceptions

LVS: \$1500

GBS: N/A

CIV: N/A

STA: Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1)) may be used for items in 0A614 without the need for a determination described in § 740.20(g). Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2)) of the EAR may not be used for any item in 0A614.

List of Items Controlled

Unit: “End items” in number; “parts,” “components,” and “accessories and attachments” in \$ value

Related Controls: (1) Defense articles that are enumerated in USML Category IX and “technical data” (including “software”) directly related thereto are subject to the ITAR. (2) See ECCN 0A919 for foreign-made “military commodities” that incorporate more than 10% U.S.-origin “600 series” items. (3) “Parts,” “components,” and “accessories and attachments” that are common to a simulator controlled by ECCN 0A614.a and to a simulated system or an end item that is controlled on the USML or elsewhere on the CCL are controlled under the same USML Category or ECCN as the “parts,” “components,” and “accessories and attachments” of the simulated system or end item.

Related Definitions: N/A

Items:

- a. “Equipment” “specially designed” for military training that is not enumerated in USML Category IX.

Note: This entry includes operational flight trainers, radar target trainers, flight simulators for aircraft classified under ECCN 9A610.a, human-rated centrifuges, radar trainers for radars classified under ECCN 3A611, instrument flight trainers for military aircraft, navigation trainers for military items, target equipment, armament trainers, military pilotless aircraft trainers, mobile training units and training “equipment” for ground military operations.

Note: *This entry does not apply to “equipment” “specially designed” for training in the use of hunting or sporting weapons.*

- b. through w. [Reserved]

- x. “Parts,” “components,” and “accessories and attachments” that are “specially designed” for a commodity controlled by this entry or an article enumerated in USML Category IX, and not specified elsewhere in the CCL or the USML.

Note Forgings, castings, and other unfinished products, such as extrusions and machined bodies, that have reached a stage in manufacturing where they are clearly identifiable by material composition, geometry, or function as commodities controlled by ECCN 0A614.x are controlled by ECCN 0A614.x.

y. Specific “parts,” “components,” “accessories and attachments” “specially designed” for a commodity subject to control in this ECCN and not elsewhere specified in the CCL, as follows:

y.1 to y.98 [Reserved]

y.99. Commodities not identified on the CCL that (i) have been determined, in an applicable commodity jurisdiction determination issued by the U.S. Department of State, to be subject to the EAR and (ii) would otherwise be controlled elsewhere in ECCN 0A614.

5. In Supplement No. 1 to Part 774, the Commerce Control List, add, between the entries for Export Control Classification Numbers 0B006 and 0B968, a new entry for Export Control Classification Number 0B614 to read as follows:

0B614 Test, inspection, and production “equipment” for military training “equipment” and “specially designed” “parts,” “components,” and “accessories and attachments” therefor, as follows (see list of items controlled).

License Requirements

Reason for Control: NS, RS, AT

Control(s)	Country chart
NS applies to entire entry except 0B614.y	NS Column 1
RS applies to entire entry except 0B614.y	RS Column 1
AT applies to entire entry	AT Column 1

License Exceptions

LVS: \$1500

GBS: N/A

CIV: N/A

STA: Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1)) may be used for items in 0B614 without the need for a determination described in § 740.20(g). Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2)) of the EAR may not be used for any item in 0B614.

List of Items Controlled

Unit: N/A

Related Controls:

Related Definitions: N/A

Items:

a. Test, inspection, and other production “equipment” “specially designed” for the “production” of commodities controlled by ECCN 0A614 or articles enumerated in USML Category IX.

b. through .w [Reserved]

x. “Parts,” “components,” and “accessories and attachments” that are “specially designed” for a commodity controlled by ECCN 0B614.

Note 1: Forgings, castings, and other unfinished products, such as extrusions and machined bodies, that have reached a stage in manufacturing where they are clearly identifiable by material composition, geometry, or function as commodities controlled by ECCN 0B614.x are controlled by ECCN 0B614.x.

y. Specific “parts,” “components,” and “accessories and attachments” “specially designed” for a commodity subject to control in this ECCN and not elsewhere specified in the CCL, as follows:

y.1 to y.98 [Reserved]

y.99. Commodities not identified elsewhere on the CCL that (i) have been determined, in an applicable commodity jurisdiction determination issued by the U.S. Department of State, to be subject to the EAR and (ii) would otherwise be controlled elsewhere in this entry.

6. In Supplement No. 1 to Part 774, the Commerce Control List, add, between the entries for Export Control Classification Number 0C201 and before the header that reads “D. Software” a new entry for Export Control Classification Number 0D614 to read as follows:

0D614 “Software” related to military training “equipment,” as follows (See list of items controlled).

License Requirements

Reason for Control: NS, RS, AT

Control(s)	Country chart
NS applies to entire entry except 0D614.y	NS Column 1
RS applies to entire entry except 0D614.y	RS Column 1
AT applies to entire entry	AT Column 1

License Exceptions

CIV: N/A

TSR: N/A

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2)) of the EAR may not be used for any “software” in 0D614.

List of Items Controlled

Unit: \$ value

Related Controls: “Software” directly related to articles enumerated in USML Category IX is subject to the control of USML paragraph IX(e). See ECCN 0A919 for foreign made “military commodities” that incorporate more than 10% U.S.-origin “600 series” items.

Related Definitions: N/A

Items:

a. “Software” (other than “software” controlled in paragraph .y of this entry) “specially designed” for the “development,” “production,” operation or maintenance of commodities controlled by ECCNs 0A614 (except 0A614.y) or 0B614 (except 0B614.y).

b.to x. [RESERVED]

y. Specific “software” “specially designed” for the “production,” “development,” or operation or maintenance of commodities controlled by ECCNs 0A614 or 0B614, as follows:

y.1. Specific “software” “specially designed” for the “production,” “development,” operation or maintenance of commodities controlled by ECCNs 0A614.y or 0B614.y.

y.2 through y.98 [RESERVED]

y.99. “Software” that would otherwise be controlled elsewhere in this entry but that (i) has been determined to be subject to the EAR in a commodity jurisdiction determination issued by the U.S. Department of State and (ii) is not otherwise identified elsewhere on the CCL.

7. In Supplement No. 1 to Part 774, the Commerce Control List, add, between the entries for Export Control Classification Numbers 0E018 and 0E918, a new entry for Export Control Classification Number 0E614 to read as follows:

0E614 “Technology,” as follows (See list of items controlled).

License Requirements

Reason for Control: NS, RS, AT

Control(s)	Country chart
NS applies to entire entry except 0E614.y	NS Column 1

RS applies to entire entry except 0E614.y	RS Column 1
AT applies to entire entry	AT Column 1

License Exceptions

CIV: N/A

TSR: N/A

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2)) of the EAR may not be used for any technology in 0E614.

List of Items Controlled

Unit: \$ value

Related Controls: “Technical data” directly related to articles enumerated in USML Category IX is subject to the control of USML paragraph IX(e).

Related Definitions: N/A

Items:

- a. “Technology” (other than “technology” controlled by paragraph .y of this entry) “required” for the “development,” “production,” operation, installation, maintenance, repair

overhaul, or refurbishing of commodities or “software” controlled by ECCNs 0A614 (except 0A614.y), 0B614 (except 0B614.y), or 0D614 (except 0D614.y).

b. through x. [RESERVED]

y. Specific “technology” “required” for the “production,” “development,” operation, installation, maintenance, repair, or overhaul of commodities controlled by ECCNs 0A614.y or 0B614.y, or “software” controlled by ECCN 0D614.y, as follows:

y.1. Specific “technology” “required” for the “production,” “development,” operation, installation, maintenance, repair or overhaul of commodities controlled by ECCNs 0A614.y or 0B614.y or “software” controlled by ECCN 0D614.y.

y.2. through y.98 [RESERVED]

y.99. “Technology” that would otherwise be controlled elsewhere in this entry but that (i) has been determined to be subject to the EAR in a commodity jurisdiction determination issued by the U.S. Department of State and (ii) is not otherwise identified elsewhere on the CCL.

<SIG>

<DATED>Dated: June 6, 2012.

<NAME>Kevin J. Wolf,

<TITLE>Assistant Secretary of Commerce for Export Administration.</SIG>

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